

By: Parker

H.B. No. 2382

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to information required to be disclosed by certain  
3 investors of publicly traded companies whose headquarters are  
4 located in this state; creating an offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. This Act shall be known as the Bring Business to  
7 Texas and Fairness in Disclosure Act.

8 SECTION 2. It is the policy of this state to:

9 (1) foster and promote the immediate and full  
10 disclosure of the individual ownership of persons who are activist  
11 investors with respect to publicly traded entities whose  
12 headquarters are located in Texas; and

13 (2) prohibit discrimination by a proxy advisory firm  
14 toward any publicly traded entity whose headquarters are located in  
15 Texas.

16 SECTION 3. Section 4, The Securities Act (Article 581-4,  
17 Vernon's Texas Civil Statutes), is amended by adding Subsections R,  
18 S, T, U, V, W, X, and Y to read as follows:

19 R. "Activist investor" means a person who, directly or  
20 indirectly, or through or with an affiliate:

21 (1) nominates or attempts to nominate the person or  
22 another person to the governing authority or body of a publicly  
23 traded entity, including the board of directors of a corporation or  
24 the general partners of a general partnership or limited

1 partnership;

2 (2) makes or attempts to make one or more shareholder  
3 proposals or the equivalent for a publicly traded entity; or

4 (3) acts broadly in concert with, or on behalf of, a  
5 person who engages in actions described by either Subdivision (1)  
6 or (2) of this subsection.

7 S. "Affiliate," with respect to a person, means:

8 (1) a family member of a natural person; or

9 (2) any person who controls, is controlled by, or is  
10 under common control with the person.

11 T. "Beneficial owner," with respect to a class of securities  
12 of a publicly traded entity, means a person who has the sole or  
13 shared power to vote or dispose of a security or who enjoys the  
14 economic benefits of ownership of a security. The term includes a  
15 person who enjoys the benefits of ownership of a security or the  
16 voting power of a security, regardless of whether the security is  
17 held in the name of another person.

18 U. "Governing authority" has the meaning assigned by Section  
19 1.002, Business Organizations Code.

20 V. "Headquarters," with respect to a publicly traded entity,  
21 means the location at which the president or other chief executive  
22 officer of the entity, a general partner of the entity, or any other  
23 senior member of the entity's management team routinely performs  
24 duties in those respective capacities.

25 W. "Mutual fund" means an entity that:

26 (1) is engaging primarily in, or proposes to engage  
27 primarily in, the business of investing, reinvesting, or trading in

1 securities;

2 (2) is engaging or proposes to engage in the business  
3 of issuing face-amount certificates of the installment type;

4 (3) has engaged in a business described by Subdivision  
5 (2) of this subsection and has outstanding a certificate described  
6 by that subdivision;

7 (4) is engaging or proposes to engage in the business  
8 of investing, reinvesting, owning, holding, or trading in  
9 securities and owns or proposes to acquire investment securities  
10 whose value exceeds 40 percent of the value of the total assets of  
11 the issuer of the securities, not including government securities  
12 and cash, on an unconsolidated basis; or

13 (5) is an investment company registered under the  
14 Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

15 X. "Proxy advisory firm" means a person that provides  
16 corporate governance ratings, proxy research, analyses, advisory  
17 services, or other similar services to shareholders of a publicly  
18 traded entity.

19 Y. "Texas-based public company" means a publicly traded  
20 entity whose headquarters are located in this state.

21 SECTION 4. The Securities Act (Article 581-1 et seq.,  
22 Vernon's Texas Civil Statutes) is amended by adding Sections 45  
23 through 55 to read as follows:

24 Sec. 45. BENEFICIAL OWNERSHIP; DISCLOSURE. A. This section  
25 applies only to a person who is simultaneously:

26 (1) a beneficial owner of a security of any class of  
27 securities of a Texas-based public company; and

1           (2) an activist investor with respect to the same  
2 Texas-based public company that is beneficially owned by the  
3 person.

4           B. Not later than the 10th day after the date the person is or  
5 becomes both a beneficial owner and an activist investor of a  
6 Texas-based public company or September 11, 2017, whichever is  
7 later, the person shall file with the Securities Commissioner and  
8 deliver, by United States certified mail, to the company's  
9 headquarters and to the company's registered agent designated under  
10 Chapter 5, Business Organizations Code, a certified statement that:

11           (1) contains:

12                   (A) the full name, identity, background,  
13 residence, primary phone number, and citizenship of the person;

14                   (B) the address of the principal place of  
15 business of the person and the person's primary e-mail address;

16                   (C) the nature of:

17                           (i) the beneficial ownership of the person;

18 and

19                           (ii) the beneficial ownership of all other  
20 persons by whom or on whose behalf the beneficial ownership of the  
21 person has been or is to be effected;

22                   (D) all plans, intentions, motives, strategies,  
23 and objectives of the person with respect to becoming an activist  
24 investor and following through with:

25                           (i) director, general partner, or other  
26 similar governing person nominations; or

27                           (ii) shareholder proposals or the

1 equivalent;

2 (E) all notes, e-mails, memoranda, letters,  
3 communications, proposals, analyses, spreadsheets, presentations,  
4 instruments, and any other documents, whether in written, digital,  
5 or magnetic format, relating to the items listed in Paragraph D of  
6 this subdivision; and

7 (F) all costs and expenses paid, incurred,  
8 authorized, and anticipated by the person in connection with the  
9 items listed in Paragraph D of this subdivision; and

10 (2) is signed by the senior executive officer of the  
11 person certifying that the information disclosed in Subdivision (1)  
12 of this subsection is correct and complete.

13 C. The following persons shall disclose the information  
14 required by Subsection B of this section in the same manner and to  
15 the same extent as a person is required to disclose the information  
16 under that subsection:

17 (1) any beneficial owner of the person; and

18 (2) all beneficial owners of the beneficial owner  
19 described by Subdivision (1) of this subsection until the last  
20 person named is a natural person.

21 D. All information disclosed under Subsection B of this  
22 section is considered public information for all purposes.

23 E. This section shall be liberally construed in favor of  
24 requiring the disclosure of information required by this section.

25 Sec. 46. NONPROFIT CORPORATION THAT BENEFICIALLY OWNS  
26 TEXAS-BASED PUBLIC COMPANY; ADDITIONAL DISCLOSURES. A. This  
27 subsection applies only to a nonprofit corporation that is the last

1 named beneficial owner of a person required to make a disclosure  
2 under Section 45B of this Act. A donor who makes financial  
3 contributions to a nonprofit corporation shall disclose the  
4 information required by Section 45B of this Act in the same manner  
5 and to the same extent as a person required to disclose the  
6 information under that section if the financial contributions are  
7 in an amount equal to the lesser of:

8 (1) one percent of the aggregate contributions made to  
9 the corporation in the preceding 12 months; or

10 (2) \$100,000.

11 B. A nonprofit corporation required to disclose information  
12 under Section 45 of this Act shall disclose:

13 (1) the corporation's annual financial statements for  
14 each of the preceding three fiscal years;

15 (2) the corporation's year-to-date financial  
16 statements for the fiscal year in which the nonprofit corporation  
17 becomes an activist investor;

18 (3) a good faith estimate of the total amount the  
19 nonprofit corporation expects to spend in the corporation's current  
20 fiscal year to further the corporation's activist investor  
21 activities directly and through other persons the corporation may  
22 have an ownership interest in or with which the corporation is  
23 affiliated; and

24 (4) the total compensation paid by the nonprofit  
25 corporation to its 10 most highly compensated employees for each of  
26 the preceding five fiscal years.

27 C. A nonprofit corporation shall disclose the information

1 required by Subsection B of this section in the same manner and to  
2 the same extent the corporation is required to disclose information  
3 under Section 45 of this Act.

4 D. This section shall be liberally construed in favor of  
5 requiring disclosure of the information required by this section.

6 Sec. 47. CHANGE TO CERTAIN DISCLOSED INFORMATION;  
7 AMENDMENT. If, during the time a person described by Section 45A of  
8 this Act is an activist investor of the Texas-based public company,  
9 any change occurs in the information contained in the certified  
10 statement the person filed under Section 45 of this Act, the person  
11 shall:

12 (1) file an amendment to the certified statement with  
13 the Securities Commissioner not later than the 10th day after the  
14 date the change occurs; and

15 (2) deliver, by United States certified mail, a  
16 correct and complete copy of the amendment to the security issuer's  
17 headquarters in this state.

18 Sec. 48. ACTIONS TO AVOID MAKING CERTAIN REQUIRED  
19 DISCLOSURES PROHIBITED. A. This section does not apply to a mutual  
20 fund.

21 B. A person may not act at the direction of, for the benefit  
22 of, or otherwise on behalf of another person with the intent or  
23 effect of avoiding a disclosure required by Section 45 or 46 of  
24 this Act.

25 C. If the board of directors or other governing authority of  
26 a corporation, limited liability company, partnership, or other  
27 Texas-based public company reasonably believes that one or more

1 persons are acting in concert with, at the direction of, or on  
2 behalf of another person with the intent or effect of avoiding a  
3 disclosure required by Section 45 or 46 of this Act, the governing  
4 authority of the company shall notify the Securities Commissioner  
5 of that conduct.

6 D. If the Securities Commissioner determines that a person  
7 is violating Subsection B of this section, the Securities  
8 Commissioner shall require the person to disclose the information  
9 required by Section 45 of this Act.

10 Sec. 49. DEFENSE TO DISCLOSURE REQUIREMENT; INJUNCTIVE  
11 RELIEF. A person who in good faith believes the person has a valid  
12 defense to a disclosure requirement of Section 45 or 46 of this Act  
13 may bring a court action on an expedited basis to seek injunctive  
14 relief.

15 Sec. 50. CONFIDENTIALITY AGREEMENTS PROHIBITED. A person  
16 who is required to disclose information under Section 45, 46, or 48  
17 of this Act may not request or require that any person entitled to  
18 receive the information:

- 19 (1) sign a confidentiality agreement; or  
20 (2) otherwise treat the information as private or  
21 confidential.

22 Sec. 51. NOTICE TO CERTAIN INVESTORS OF ACTIVIST INVESTORS  
23 OF TEXAS-BASED PUBLIC COMPANIES. A. This section applies only to  
24 a person who has the capability to become an activist investor of a  
25 Texas-based public company and who solicits or accepts money from  
26 one or more investors.

27 B. Before accepting money from an investor and at least once

1 each calendar year, a person shall provide to the investor:

2 (1) a written statement stating that the person may  
3 become an activist investor of a Texas-based public company; and

4 (2) a legible copy of the most recent version of this  
5 section and Sections 4, 45, 46, 47, 48, 49, 50, 52, 53, and 54 of  
6 this Act.

7 Sec. 52. DISCLOSURES REQUIRED BY CERTAIN PROXY ADVISORY  
8 FIRMS. A. This section applies to a proxy advisory firm that  
9 publishes or otherwise provides an analysis or a recommendation to  
10 one or more shareholders of a Texas-based public company  
11 concerning:

12 (1) a nominee to the governing authority or body of  
13 another publicly traded entity, including the board of directors of  
14 a corporation and the general partners of a partnership; or

15 (2) a shareholder proposal submitted by an activist  
16 investor.

17 B. At the same time a proxy advisory firm provides to the  
18 shareholders of a Texas-based public company an analysis or  
19 recommendation described by Subsection A of this section, the firm  
20 shall file with the Securities Commissioner and deliver to the  
21 company's headquarters and to the company's registered agent, in  
22 the manner prescribed by Subsection C of this section:

23 (1) all financial statements of the proxy advisory  
24 firm for each of the preceding five years, including an audited  
25 balance sheet, income statement, and cash flow statement; and

26 (2) a written statement that:

27 (A) contains:

1                   (i) the names of all beneficial owners of  
2 the proxy advisory firm, until each beneficial owner named is a  
3 natural person; and

4                   (ii) all notes, e-mails, memoranda,  
5 letters, communications, proposals, analyses, spreadsheets,  
6 presentations, instruments, and any other documents, whether in  
7 written, digital, or magnetic format, relating to the discussions  
8 and deliberations that resulted in the proxy advisory firm's  
9 analysis or recommendation regarding the activist investor's  
10 governing authority nominee or shareholder proposal; and

11                   (B) is signed by the senior executive officer of  
12 the proxy advisory firm certifying that the information provided in  
13 this subsection is correct and complete.

14                   C. A notice to a Texas-based public company required under  
15 Subsection B of this section must be delivered by:

16                   (1) United States certified mail; or

17                   (2) a nationally recognized overnight courier service  
18 with confirmation of receipt.

19                   Sec. 53. DISCLOSURE REQUIREMENTS APPLICABLE TO OTHER PROXY  
20 ADVISORY FIRMS. If the Securities Commissioner determines that a  
21 proxy advisory firm has lowered its rating of a Texas-based public  
22 company as a result of the requirements of Sections 45, 46, 47, 48,  
23 49, 50, 51, 52, 54, and 55 of this Act, the disclosure requirements  
24 of Section 52 of this Act apply to the firm.

25                   Sec. 54. CRIMINAL PENALTY. A. A person commits an offense  
26 if the person does not comply with the requirements of Sections 45,  
27 46, 47, and 48 of this Act. An offense under this subsection is a

1 Class C misdemeanor.

2 B. Any criminal penalty under this section shall be imposed  
3 against the senior executive officer of the person that did not  
4 make the required disclosure, in the executive officer's personal  
5 capacity.

6 C. This section may be enforced by the attorney general or by  
7 the district attorney of the county in this state in which the  
8 headquarters of the security's issuer is located.

9 Sec. 55. PRIVATE CAUSE OF ACTION. A. This section applies  
10 to a Texas-based public company entitled to receive a disclosure  
11 under Sections 45, 46, 48, 52, and 53 of this Act.

12 B. A Texas-based public company or a person acting on behalf  
13 of the company may bring an action, on an expedited basis, in a  
14 court in this state against a person that does not comply with the  
15 disclosures described by Subsection A of this section for:

16 (1) injunctive relief; and

17 (2) recovery of the company's reasonable attorney's  
18 fees.

19 C. A civil penalty or remedy in addition to the injunctive  
20 relief provided by Subsection B of this section may not be imposed  
21 or awarded against a person for a violation that arises out of the  
22 same conduct described by that subsection.

23 SECTION 5. This Act takes effect September 1, 2017.